

7 FAM 1030

UNITED STATES AS PROTECTING POWER

(CT:CON-407; 06-29-2012)

(Office of Origin: CA/OCS/L)

7 FAM 1031 PROCEDURES FOR ASSUMING REPRESENTATION

7 FAM 1031.1 Customary Procedure for Request

(CT:CON-138; 05-17-2006)

- a. As a general rule, a power seeking protection of its foreign interests makes its request through a diplomatic note to the United States.
- b. If the Department (CA, L/CA, L/DL, DS/OFM and the Regional Bureau) agrees to the request, the Department (CA) issues appropriate instructions to the concerned overseas post. These instructions will normally include copies of the agreement or exchange of communications.

7 FAM 1031.2 Direct Request to Posts Abroad

(CT:CON-138; 05-17-2006)

- a. If a post receives directly from a foreign power a request for diplomatic or consular representation, respond by requesting the foreign power to address the request to the Department through the customary diplomatic channels.
- b. At the same time, report the matter fully to the Department via telegram, (using, as appropriate, TAGS: CASC, CMGT, CFED, AEMR, PREL, OFDP, ASEC), including the following information in the report:
 - (1) The form of protection that the foreign power has requested, i.e., good offices, formal representation, or some specialized type of protection such as invoice services;
 - (2) The specific area in which the foreign power seeks protection and the approximate volume and nature of protection work that the foreign power wants the United States to perform;
 - (3) The origin of the request (whether made at the direction of the power desiring protection or on the initiative of the diplomatic or

- consular representative making the request);
 - (4) Post's opinion regarding the advantages or disadvantages of complying with the protection request, emphasizing in particular any political considerations which might make the protection in question inadvisable to the Department; and
 - (5) Whether post believes the local power will agree to, or acquiesce in, the request.
- c. Upon receipt of the report, the Department, if convinced of the urgency of the situation, may authorize the provisional exercise of protection pending the receipt of a formal request from the protected power.

7 FAM 1032 DEPARTMENT APPROVAL AND EMERGENCY EXCEPTION

(CT:CON-138; 05-17-2006)

- a. The Department (CA, L/CA, L/DL and the Regional Bureau) must approve post's assuming protection of a foreign interest in advance, except in extreme emergencies such as natural disasters.
- b. When post assumes protection in an extreme emergency, the post should follow the procedure set forth in 7 FAM 1015.1-2 for direct requests that post receives from foreign powers, except that post must report by cable to the Department the nature of the emergency which justified the assumption of protection without prior authorization from the Department.

7 FAM 1033 NOTIFICATION TO LOCAL POWER

(CT:CON-138; 05-17-2006)

- a. An overseas post should promptly notify the local power through the U.S. diplomatic mission before it assumes protection of a foreign interest.
- b. The local power may grant or withhold agreement to such assumption of protection. Department will provide specific guidance based on the facts and circumstances, In some instances, it may be appropriate to regard silence as sufficient assent without formal agreement.

7 FAM 1034 REPORT TO DEPARTMENT

(CT:CON-407; 06-29-2012)

The post assuming protection of a foreign interest should notify the Department (CA, L/CA, L/DL and the Regional Bureau) via cable of the date on which it assumes protection of a foreign interest and the date post notified the appropriate local power. A copy of the diplomatic note notifying the appropriate local power should be faxed or scanned and emailed to *CA/OCS/L* for record keeping.

7 FAM 1035 JURISDICTION OF OVERSEAS POSTS

(CT:CON-138; 05-17-2006)

- a. Jurisdiction over the protection of foreign interests attaches to the post rather than to any particular officer assigned to the post.
- b. Once the Department authorizes a post to undertake the protection of a foreign interest, each succeeding officer assigned to this work may assume the duties that the function involves without further authorization from the Department.
- c. If responsible officers exercise protection on a country-wide basis, they should centralize their efforts to the extent practicable at the principal post.

7 FAM 1036 RELATION OF U.S. OFFICERS TO PROTECTED POWER

7 FAM 1036.1 Responsibilities in General

(CT:CON-138; 05-17-2006)

- a. An officer of an overseas post is never accredited as a diplomatic or consular officer of a protected power.
- b. When the Department assigns an officer the function of protecting the interests of another government, that officer answers only to the Government of the United States for the manner in which he/she discharges this function. Since the Department makes available the officer's services to the protected power solely as a matter of courtesy, the protected power should not hold either the officer or the U.S. government responsible for services that the officer performs on behalf of the protected power. The question of liability is something addressed in the arrangement/agreement.
- c. An officer protecting the interests of a foreign power generally reports to and receives instructions from the Department, which will in turn,

communicate reports to the protected power and ascertain the wishes of such power regarding services to be performed on its behalf. (See 7 FAM 1019.1).

7 FAM 1036.2 Restrictions on Actions

(CT:CON-138; 05-17-2006)

An officer protecting the interests of a foreign power must not perform the following actions:

- (1). Perform any duties that involve the acceptance of a foreign government office.
- (2). Display the coat-of-arms or the flag of the protected power or employ its seal or the seal of any of its diplomatic or consular offices.
- (3). Perform any services or duties on behalf of the protected power which might be detrimental to U.S. trade or other U.S. interests. When in doubt, posts should consult with the Department (CA, L/CA, L/DL and the Regional Bureau).
- (4). Perform on behalf of the national of a protected power any services that are contrary to U.S. policy. The Department will provide specific guidance regarding Treasury restrictions administered by the Office of Foreign Assets Control, Executive Orders and other measures. When in doubt, consult the Department (CA, L/CA, L/DL and the Regional Bureau).
- (5). Communicate directly on protection matters with the protected power, unless instructed by the Department to do so.

7 FAM 1037 PROPERTY AND ARCHIVES OF PROTECTED POWER

7 FAM 1037.1 Responsibility of Protecting Officer

(CT:CON-138; 05-17-2006)

The Department holds an officer at an overseas post charged with the protection of the interests of a foreign power responsible for the custody, care and conservation of the diplomatic and consular property of the protected power in his area of jurisdiction. The responsible U.S. officer must take steps to inventory, protect, store, and account for diplomatic and consular property. The consular officer is **not "an accountable officer"** with respect to the protected party's property.

7 FAM 1037.2 Protective Measures

(CT:CON-138; 05-17-2006)

- a. When an officer at an overseas post takes custody of the property of a protected power, the officer should promptly notify the local authorities of the location of all property of the protected power under the protection of the U.S. government.
- b. The concerned post should affix to the diplomatic and consular buildings and to possessions left behind by members of the diplomatic and consular staffs of the protected power, a notice under the seal of the U.S. mission or consular office stating that the property is under the protection of the Government of the United States of America.
- c. The responsible U.S. officer concerned should make a survey to determine the possibility of storing the archives and other property, suitably packed, in a reliable commercial warehouse or other repository, if the protected power has no diplomatic or consular building in which the responsible U.S. officer can store the archives and other property. The responsible U.S. officer must not store the property of a protected power on the premises of an overseas post without the specific authorization of the Department.

7 FAM 1037.3 Inventory and Receipts for Property

(CT:CON-138; 05-17-2006)

When the responsible U.S. officer takes custody of a protected power's property, the officer should prepare an itemized inventory of such property. The Department (CA/OCS) will provide specific guidance to the post regarding preparation of the inventory and record keeping.

7 FAM 1037.4 Sale of Property

(CT:CON-138; 05-17-2006)

- a. If it is impracticable to remove automotive equipment, the responsible officer should arrange a sale in accordance with 14 FAM 417.3-3 and 14 FAM 418.9 a.
- b. The U.S. officer should credit proceeds of the sale as directed per 14 FAM 418.9 b.

7 FAM 1038 COMMUNICATIONS RELATING TO PROTECTION

7 FAM 1038.1 Channeling Communications

(CT:CON-138; 05-17-2006)

- a. An officer of the overseas post responsible for the protection of foreign interests should normally communicate with the protected power indirectly, through the Department and the U.S. embassy or consulate in or near the protected power.
- b. Similarly, the protected power communicates with the responsible officer at the U.S. embassy or consulate through the U.S. diplomatic mission in or near the protected country and the Department.
- c. The Department may, at its discretion, authorize direct communication between the protecting U.S. officer and the U.S. mission in the protected country in exceptionally urgent cases or in routine matters where the volume of work is heavy.

7 FAM 1038.2 Identification of Correspondence

(CT:CON-138; 05-17-2006)

All communications from U.S. embassies and consulates implementing their role as protecting power should use the CMGT tag and bear in the subject line an identifying phrase, “(Name of Country) interests” in order to facilitate the routing of such correspondence in the Department.

7 FAM 1038.3 Signing

(CT:CON-138; 05-17-2006)

Officers at overseas posts protecting the interests of other governments should sign:

(Name), U.S. (Title) in charge of the interests of (Name of Foreign State)

7 FAM 1039 FUNDS AND PERSONNEL FOR PROTECTING POWER FUNCTION

7 FAM 1039.1 Funds

(CT:CON-138; 05-17-2006)

- a. The U.S. Government does not advance funds to finance the protection of the interests of foreign governments. An officer taking over the interests of a foreign government should, therefore, report promptly to the

Department by cable a status of funds, both current and estimated for the remainder of the fiscal year, itemized by major activity. The officer should develop this estimate in conjunction with the post management officer, CA/EX, and, if possible, with information provided by the protected power.

- b. The Department will then request the protected power for a deposit of sufficient funds to cover this estimate.

7 FAM 1039.2 Personnel

(CT:CON-138; 05-17-2006)

- a. If the volume of work in connection with protecting the interests of a foreign government warrants the employment of special personnel for the purpose or the continued employment of subordinate personnel previously serving the protected power in the same capacity, the concerned overseas post should promptly cable its recommendations to the Department.
- b. All employees that responsible officers hire in connection with protecting the interests of a foreign government should be temporary employees and receive their salaries from the funds that the protected power previously deposited with the Department or with post. Compensation is provided in accordance with the post's Local Compensation Plan and Department regulations and policies governing temporary employment.
- c. Post should maintain separate personnel records on such employees, using for this purpose the same forms used for overseas employees of the Department with appropriate amendments.
- d. The U.S. Government does not charge protected powers for the services of commissioned officers of the U.S. Government or other regular employees who receive their salaries from U.S. government funds.